Again, I appreciate the help of Senators KENNEDY and ENZI and their talented staff in getting this amendment included in this bill. They have been very helpful, and I look forward to providing them any assistance they need in order to keep this in conference.

AMENDMENT NO. 993

Mr. GREGG. Mr. President, last week, the FDA just sent out a warning to American consumers regarding purchasing medications from certain Internet sites because the FDA cannot verify that the drugs purchased over those sites are going to be safe or that they won't be counterfeit. We need to give the FDA the authority and the resources to address the issue of unsafe Internet pharmacies and the Gregg Internet pharmacy amendment does just that. It creates a comprehensive framework to assure consumers that they can shop with confidence, knowing that the drugs they purchase online will be safe and effective. Hopefully, we will address this important and timely drug safety issue, if not now, at least before this bill completes the whole process and comes back from the conference committee

Mr. KENNEDY. I thank the Senator from New Hampshire for his interest and work on this important issue. Ensuring that people have access to safe and effective medications when purchasing prescription drugs online is an important part of our efforts in the area of drug safety. The Dorgan legislation in this bill includes some provisions on the issue of Internet pharmacies, but I am willing to work with my colleague and our colleagues in the Senate to enhance these provisions to address the important issues he has raised over the course of this debate.

Mr. ENZI. I would also like to take the opportunity to express my support for the need to address the issue of unsafe Internet pharmacies. We have worked very hard in other portions of this bill to ensure the safety of prescription drugs on the market, and as this bill advances, I look forward to working with you both to enhance the provisions in this bill relating to the safety of Internet pharmacies.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

MORNING BUSINESS

Mr. BROWN. I ask unanimous consent that there now be a period of morning business with Senators permitted to speak therein for up to 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

IN RECOGNITION OF TOM CLEWELL

Mr. REID. Mr. President, I rise today to recognize the contributions of Tom Clewell to Sparks, NV. After serving the city of Sparks for more than 36 years, Tom retired from his 3-year post as fire chief on May 4, 2007.

Tom is a native Nevadan, attending school in Reno and raising a family in Sparks. He joined the Sparks Fire Department as a temporary firefighter in April 1971, and eventually climbed the ranks to become the city's 10th fire chief in its history. He served in many roles throughout his time with the Sparks Fire Department including operator, captain, battalion chief, and division chief.

Throughout his 36 years, Tom led the fire department through many changes in Sparks. For example, Tom reorganized the department creating four division chiefs. Tom also encouraged greater training of firefighters in Sparks. He also managed the rapid growth surrounding Sparks and introduced fire prevention measures as housing developments began heading toward the foothills.

Upon his retirement, the city manager of Sparks said, ''Tom has been one of the greatest leaders I have ever been associated with.'' That quote speaks volumes about Tom's leadership. I have known Tom for many years. His professional accomplishments are numerous, but I think Tom would likely describe his family as his greatest honor. He is the proud father to Angela and Lindsey. He shares in this joy with his wife Francine.

I am privileged to have the opportunity to honor Tom Clewell before the United States Senate today. I am certain that in his retirement Tom will continue to serve the citizens of Sparks with the dedication he has shown over the past 36 years and I wish him well on his future endeavors.

GENOCIDE ACCOUNTABILITY ACT

Mr. DURBIN. Mr. President, S. 888, the Genocide Accountability Act, is the first legislation produced by the Senate Judiciary Committee's new Subcommittee on Human Rights and the Law, which I chair. It is bipartisan legislation that I introduced with Senator TOM COBURN, ranking member of the Human Rights and the Law Subcommittee, Senator PATRICK LEAHY, chairman of the Judiciary Committee, and Senator JOHN CORNYN.

The Genocide Accountability Act would close a legal loophole that prevents the U.S. Justice Department from prosecuting individuals who have committed genocide. Under current law, genocide is only a crime if it is committed within the United States or by a U.S. national outside the United States. The Genocide Accountability Act would amend 18 U.S.C. 1091, the Genocide Convention Implementation Act, to allow prosecution of non-U.S. nationals who are brought into or found in the United States for genocide committed outside the United States.

I recently received a letter from David Scheffer, U.S. Ambassador at Large for War Crimes from 1997 to 2001, which makes clear the impact that the Genocide Accountability Act could have. Ambassador Scheffer's letter explains that the loophole in our genocide law hindered the U.S. Government's efforts to secure the apprehension and prosecution of former Cambodian dictator Pol Pot, one of the worst war criminals of the 20th century. If the Genocide Accountability Act had been law when Pol Pot was alive and at large, maybe the United States would have been able to bring him to justice.

The Genocide Accountability Act recently passed the Senate unanimously. I am hopeful that in short order the House of Representatives will pass it and the President will sign it into law.

The United States should have the ability to bring to justice individuals who commit genocide, regardless of where their crime takes place and regardless of whether they are a U.S. national. The Genocide Accountability Act would end this immunity gap in U.S. law.

Mr. President, I ask unanimous consent to have Ambassador Scheffer's letter to which I referred printed in the RECORD.

There being no objection, the letter was to be printed in the RECORD as follows:

CENTER FOR INTERNATIONAL
HUMAN RIGHTS,
April 6, 2007.

Re lost opportunities to achieve international justice.

Senator RICHARD DURBIN,
Chairman, Subcommittee on Human Rights and the Law, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR SENATOR DURBIN: you have asked me to recount how limitations in U.S. federal law during the 1990's prevented the Clinton Administration, in which I served as U.S. Ambassador at Large for War Crimes Issues (1997–2001), from ensuring the speedy apprehension and prosecution of the former Cambodian leader, Pol Pot, on charges of genocide, crimes against humanity, or war crimes (''atrocity crimes'') prior to his death in March 1998. Because such limitations in U.S. law remain, particularly with respect to the crime of genocide, it may be useful for Members of Congress to consider how historically devastating was this lost opportunity to achieve some measure of justice for the deaths of an estimated 1.7 million Cambodians under Pol Pot's rule from 1975 to 1979.

In June 1997 the then two co-prime ministers of Cambodia, Hun Sen and Norodom Ranariddh, sent a letter to the Secretary-General of the United Nations seeking assistance to establish an international criminal tribunal that would render justice to the senior Khmer Rouge leaders, none of whom had been prosecuted with the sole exception of a highly dubious in absentia trial of Pol Pot and his foreign minister, Ieng Sary, in a Cambodia in 1979 shortly after the fall of the Khmer Rouge regime. The jointly-signed letter in June 1997 opened two pathways of action by the Clinton Administration: the first continues to this day, namely how to investigate and prosecute surviving senior Khmer Rouge leaders and bring them to justice before a credible court of proper jurisdiction; the second interrelated issue dealt with effective measures to apprehend and hold suspects in custody until they could be brought to trial.

Since no international criminal tribunal existed in 1997 that was specially designed to

investigate and prosecute senior Khmer Rouge leaders and because the judicial and political situations within Cambodia did not favor domestic prosecution at that time, we began in late June 1997 to examine options for prosecution of Pol Pot and his leadership colleagues before a yet-to-be-created international tribunal or before either U.S. federal courts or foreign domestic courts. We were receiving signals that Pol Pot, who had been in hiding since his fall from power in 1979, might be located and in a position either to be captured or to surrender in a manner that would facilitate his transfer to a court of competent jurisdiction.

Among all the options we examined at the time, the most desirable was the establishment of an international criminal tribunal by authorization of the U.N. Security Council acting under U.N. Charter Chapter VII enforcement authority. This was the means by which the International Criminal Tribunals for the Former Yugoslavia and Rwanda were created. I pursued that option until the summer of 1999, when various factors made it unrealistic and required a change of strategy that ultimately resulted in the creation of a hybrid domestic court in Cambodia called the Extraordinary Chambers in the Courts of Cambodia. But because, beginning in mid-1997, we began to experience episodes where the prospects of capturing Pol Pot (and later one of his top officials, Ta Mok), were quite high, I needed to find a jurisdiction (U.S. or foreign) which would receive Pol Pot and hold him until the international criminal tribunal could be created and then he could be transferred to the jurisdiction of that tribunal. If we chose or were compelled (by virtue of no foreign country accepting Pol Pot) to transfer Pol Pot to U.S. territory, we had to be prepared to prosecute him before a U.S. court in the event the U.N. Security Council failed to create an international criminal tribunal with jurisdiction to prosecute senior Khmer Rouge leaders.

But Pol Pot was not a natural candidate for a genocide prosecution before any U.S. court. Under 18 U.S.C. §1091(d) (1999), only an American citizen who is charged with committing genocide anywhere in the world or anyone (including an alien) who commits genocide in the United States can be prosecuted. This seemed incredulous to me at the time, given the prima facie case against Pol Pot for atrocity crimes, including genocide, and this rare opportunity to capture and bring him to justice. Instead of stepping forward immediately and making U.S. courts available to prosecute this notorious individual, I had to wade into a thicket of diplomacy to try to find a willing government somewhere who would accept Pol Pot (if captured) and either detain him until an international criminal tribunal was created or prosecute him in its own courts.

Nonetheless, efforts were made by the Justice Department (beginning in late June 1977) to explore options under U.S. law for a possible prosecution of Pol Pot if he were captured and brought to U.S. territory. Initially, attention focused on whether any U.S. official personnel were victims of the atrocity crimes of the Pol Pot regime. The roster of federal agencies from which personnel could be identified for this purpose was set forth in 18 U.S.C. §1114. The Central Intelligence Agency was not listed in that roster of agencies. U.S. courts would have had jurisdiction over a crime committed (in this situation, in Cambodia) against U.S. personnel from one of the designated agencies in Section 1114. However, no such individual could be identified by the Justice Department. Therefore, we lost our best opportunity for jurisdiction for the reason that, according to the Justice Department research, no U.S. government personnel (at least from the agencies identified in Section 1114) lost their lives under the Pol Pot regime. There were American citizens who died in Cambodia during the relevant period (1975–1979) of Pol Pot's rule, but they did not qualify under U.S. law at the time as triggering federal jurisdiction.

There was a second rational for prosecution of Pol Pot which arose in March 1998 when we were very close to achieving apprehension of Pol Pot and flying him out of Cambodia or Thailand to U.S. territory. Justice Department officials put forward a theory called the ex post facto limitation analysis. It was a high risk gamble in federal court that rested, essentially, as I recall, on applying the customary law principles codified in the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the events that transpired in Cambodia in the late 1970's, and joining those principles with the President's broad authority under the foreign affairs powers of the U.S. Constitution. One must remember that the Genocide Convention Implementation Act of 1988 (the Proxmire Act) was not adopted until 1988 and thus acts of genocide committed during the late 1970's would not have qualified in any event for U.S. prosecution even if the standard grounds for personal or territorial jurisdiction under the law were satisfied. The Justice Department officials warned that there was no assurance whatsoever that a federal court would be persuaded by the ex post facto limitation analysis and if the judicial effort failed, then Pol Pot might walk away free from U.S. detention and onto U.S. territory. Ultimately, by September 1998, the Attorney General signaled her unwillingness to attempt prosecution if Pol Pot were brought to U.S. territory for any period other than a very temporary stay (see below).

Of comparable concern to my Justice colleagues in 1997, 1998, and 1999 when either Pol Pot or Ta Mok or other senior Khmer Rouge leaders were within our sights for apprehension or surrender in Cambodia, was how to defeat a habeas corpus petition by any one of them if they were detained on U.S. territory or held by U.S. authorities on foreign territory. That concern meant that Justice needed to be confident there was enough evidence on the detainee to make a prima facie case against him or at least provide sufficient documentation to the court to ensure that the habeas petition would be defeated. Although this concern was relevant for Pol Pot, it became extremely significant with respect to other senior Khmer Rouge leaders (such as Khieu Samphan, Ieng Sary, Ta Mok, Nuon Chea, and others) for whom the evidence had not yet been collected to a degree and in a manner that satisfied the Justice officials.

In response to this concern, the Justice Department deployed lawyers to Yale University in New Haven, where documents from the Pol Pot era were being stored, and ultimately to the Documentation Center for Cambodia in Phnom Penh, to examine documents that might implicate senior Khmer Rouge leaders. I seem to recall that those research efforts left the lawyers still concerned about whether a federal court would dismiss a habeas challenge from any one of the senior Khmer Rouge leaders.

These were critical arguments to factor into the overall strategy. Justice officials advised that they would not want to hold Pol Pot or his colleagues on U.S. territory for more than about ten days if there was no likelihood of bringing them to trial before a federal court. They also could not rationalize any perpetual detention that would unquestionably survive a habeas challenge. If we were not prepared to prosecute the senior Khmer Rouge leaders in federal court, including under the high-risk strategy of ex post facto limitation analysis, then any detention on U.S. territory must be exceptionally temporary (no more than ten days), thus essentially serving as a way-station to a confirmed onward destination (namely, a foreign national court or an international criminal tribunal).

These significant concerns, prompted by the absence of a genocide law that had jurisdiction over Pol Pot and senior Khmer Rouge leaders and by concerns over habeas corpus challenges in the federal courts, pointed us to a detention strategy that stood a much better chance of defeating, if not avoiding, a habeas challenge and ultimately using a jursdiction (national or international) willing to prosecute these individuals.

When the net was closing in on Pol Pot in March 1998, we arranged with Palau that it serve as a likely destination for Pol Pot, who would be flown there by U.S. aircraft with the permission of the Government of Palau and the Government of Cambodia. U.S. Marshalls would guard Pol Pot until a suitable jurisdiction could be found for his trial (and we knew that might take some time). After Pol Pot's sudden and untimely (not to mention mysterious) death in Cambodia in late March 1998, we focused on using Palau as a detention site for any other senior Khmer Rouge leaders who could be apprehended and, with the permission of the Government of Cambodia, transported out of Cambodia (or Thailand if anyone of them had crossed the border during a chase) to Palau to await a final destination for trial. But the dynamics of custody evolved following Pol Pot's death. Arrangements for potential detention on Palau were finalized and by August and September 1998, the internal argument prevailed that any custody on Palau should be joint custody by Cambodian and American guards, undertaken at the request of the Cambodian Government, and preferably (though it was not essential) achieved even at the request of the detainee. At that point, we knew that most potential detainees (senior Khmer Rouge leaders) did not wish to be incarcerated in Cambodia. Indeed, we knew that shortly bcfore his death Pol Pot had reportedly told journalist Nate Thayer that he was prepared to go to the United States to face justice. We also knew by September 1998 that Ta Mok was not willing to surrender for a trial in Cambodia, but we wondered whether that was a signal that he might agree to stand trial outside of Cambodia.

The joint custody arrangement on Palau, especially if it could be supplemented by the request of the detainee himself, could greatly strengthen the Justice Department's case in the event of a habeas corpus challenge to federal court by anyone of the detainees that might be held in Palau. Even though Palau was by then an independent nation, its former U.S. territorial status and the fact of U.S. custody on Palau raised enough concerns that the shield of joint Cambodian-American custody, the request of the Government of Cambodia, and the approval of the Government of Palau all combined to reassure us of the viability of a Palau detention site. One indeed was created; U.S. Marshalls were deployed in anticipation of arrivals of captured senior Khmer Rouge leaders; and even the U.S. Ambassador to the Philippines, who included Palau in his portfolio, at one point stood ready at the site to receive the suspects. I need to emphasize, however, that Palau was seen strictly as a relatively temporary detention site until a proper and willing national jurisdiction could be found or, with the possibility of an international criminal tribunal, created for

purposes of investigating and prosecuting these individuals. But we had no expectation of it taking more than several months to find suitable jurisdiction (particularly given the high-profile reality of Pol Pot finally in custody and our hope that having him in custody would spur Security Council interest in finding a means to prosecute him).

As it turned out, not a single senior Khmer Rouge leader was ever captured with the assistance of U.S. authorities. The cooperation of the Cambodian Government for detention of suspects at Palau collapsed by early 1999. The plan would have been activated if our efforts to capture Pol Pot had not been scuttled by his sudden death in late March 1998. Our vigorous efforts to capture Ta Mok (or secure his surrender) during the rest of 1998 and into early 1999 finally were overtaken when he was captured by Cambodian forces and detained in Phnom Penh. Other senior Khmer Rouge leaders surrendered under arrangements that kept them out of prison in Cambodia, with the exception of Kang Kek Ieu (alias Comrade Duch), the chief of the notorious Tuol Sleng prison, who remains imprisoned to this day by Cambodian authorities in Phnom Penh. So the habeas corpus concerns never were tested even under the remote circumstances that would have been presented with a joint custody arrangement in Palau.

The other story in this saga concerns my efforts to find the alternative jurisdiction before which Pol Pot and his colleagues could be held until transferred to a newly established international criminal tribunal or prosecuted for genocide and other atrocity crimes. In all of these efforts, which I will describe briefly, the fact that the United States was incapable of prosecuting the crime of genocide against Pol Pot and the senior Khmer Rouge leaders was diplomatically crippling. It forced me to concede that the United States had not stepped up to the plate itself with some reasonable application of universal jurisdiction for genocide. How could I credibly persuade other governments to stretch their domestic law to prosecute Pol Pot et al. when the United States was not prepared to do so (and had as much if not more reason to try to do so in the case of Cambodia than, say, Sweden, Denmark, Norway, or Spain). If the United States had had the legal tools wit which to prosecute Pol Pot, but was hampered for some political or logistical reason, at least then I could have argued with credibility that a foreign government also has the responsibility to step forward and bring this man to justice. So I was dealt a very weak hand.

I pursued two tracks of diplomatic strategy to find a jurisdiction willing and able to prosecute Pol Pot and the senior Khmer Rouge leaders. Both tracks were launched immediately in June 1997 when the first opportunity arose to apprehend Pol Pot. The first track was to approach countries either with some capability in their domestic criminal codes to exercise a form of universal jurisdiction over genocide and/or crimes against humanity or (we thought) might be willing to find an innovative way to prosecute Pol Pot. These countries at first included Canada and Denmark and later, in April 1998, expanded to include Germany, Spain, Norway, Sweden, Australia, and Israel. Each one of them declined the opportunity I presented to receive Pol Pot for trial in the event the United States Government arranged for his capture and then transport to such country. Each one also declined the opportunity to hold Pol Pot temporarily until a suitable national court or international criminal tribunal could be found or created for the purpose of prosecuting Pol Pot and other senior Khmer Rouge leaders.

The second track of diplomatic strategy was to persuade U.N. Security Council members to join us in approving the establishment of an international criminal tribunal to investigate and prosecute the senior Khmer Rouge leaders (including Pol Pot while he was still alive). This proposal went through various stages of evolution, and included plans for sharing certain functions, such as the prosecutor and the appeals chamber, with the International Criminal Tribunal for the Former Yugoslavia (ICTY). In late April and early May of 1998 I worked closely with the U.S. Mission to the United Nations to formally present a draft resolution, with a draft statute for the tribunal appended, to other Security Council members for their consideration. Concerns by other members arose as to germaneness for the Council (i.e., whether there still existed a threat to international peace and security in Cambodia that would trigger Security Council jurisdiction), whether the ICTY's jurisdiction (or perhaps that of the International Criminal Tribunal for Rwanda) should be expanded, whether the Government of Cambodia would formally request such a tribunal (which one permanent member considered essential), and how the cost would be borne. China and Russia, in particular, balked at the proposal and refused to indicate any support whatsoever. Tribunal fatigue on the Security Council also took hold to slow down the Cambodia option. Another key factor was the advent of the permanent International Criminal Court and concerns that an initiative on Cambodia would shift attention and resources away from that key priority for many of the Security Council members (permanent and non-permanent).

Without any leverage to threaten U.S. prosecution in the absence of an international criminal tribunal, I could only press the merits of the issue as hard as possible, knowing that achieving international justice for the atrocity crimes of the Pol Pot regime was not a high priority for most other governments. Indeed, for some it may have been viewed as a threat to their own national interests. I would have benefited, however, if at key junctures in the negotiations over an international criminal tribunal I could have asked whether our colleagues on the Security Council would be more comfortable with a U.S. federal court examining the evidence or would they find more palatable a tribunal of international composition investigating Pol Pot's deeds. I never had the opportunity to offer that choice in my talks.

By August 1999 I had exhausted my final efforts to achieve a Security Council international criminal tribunal with both the Government of Cambodia and with other Security Council members. At that point the Clinton Administration shifted its focus to creating a hybrid court in Cambodia and intensive efforts led by late 2000 to what became the Extraordinary Chambers in the Courts of Cambodia, approved initially by the Cambodian National Assembly in early 2001. But by August 1999 the prospect of looking to the United States as a plausible jurisdiction for prosecution of genocide in Cambodia already had become a distant memory.

In conclusion, I would stress that the inability of U.S. courts to prosecute Pol Pot and the senior Khmer Rouge leaders contributed to significant delays in bringing these individuals to justice, delays that reverberate to this day as the Extraordinary Chambers in the Courts of Cambodia struggle to overcome one obstacle after another before proceeding to indictments and trials. Several key suspects died before they could be brought to trial, including Pol Pot, Ke Pauk, and Ta Mok. Their fates—dead before justice could be rendered—did not necessarily have to become the historical record. We could have moved much faster and more decisively in 1997 and 1998 to secure their custody, ensure proper medical care, and bring them before a court of either national or international jurisdiction if the reality of U.S. jurisdiction for at least the crime of genocide had existed. If we seek to influence others to prosecute the crime of genocide, and if we aspire to arming our diplomats with the arguments they need to influence other governments to accept their responsibilities for international justice, we must be able to demonstrate that our courts have, within reasonable parameters, the jurisdiction to prosecute the crime of genocide. Even if such jurisdiction may rest upon the discretion of, say, the Attorney General under certain extreme circumstances, we must be able to use it for the worthy purpose of credible justice.

During the final negotiations for the Rome Statute of the International Criminal Court in July 1998, I presented the U.S. position that with respect to the crime of genocide, the International Criminal Court should exercise universal jurisdiction. That U.S. position in the negotiations was partly influenced by our unfortunate experience with Pol Pot months earlier.

I would hope that given all of this experience-stretching back to the Holocaust and even earlier, and given the logic that must apply to ending the crime of genocide, U.S. law at long last could reflect the illegality of genocide committed by anyone anywhere in the world and the ability of our courts to prosecute the perpetrators of genocide, including when they are non-citizens who stand on U.S. soil.

Respectfully,

DAVID SCHEFFER,
Mayer, Brown, Rowe & Maw/Robert A. Helman Professor of Law, Director, Center for International Human Rights, Northwestern University School of Law.

HONORING OUR ARMED FORCES

PRIVATE FIRST CLASS BRIAN BOTELLO

Mr. GRASSLEY. Mr. President, it is with sadness that I pay tribute today to a young man from Iowa who gave his life in service to his country. PFC Brian A. Botello was killed on April 29, 2007, while serving in Iraq as part of the 3rd Squadron, 61st Cavalry Regiment, 2nd Infantry Division. My prayers go out to his mother Karyn, in Alta, IA, and his father Tony in Michigan. They can be proud of their son's honorable service and the tremendous sacrifice he made for his country. All Americans owe a debt of gratitude to Brian Botello. His memory will live on along those other patriots who have laid down their lives for the cause of freedom.

I know that Brian's loss will be felt particularly deeply in the small town of Alta where he grew up. I know that flags have been flown at half mast and everyone from his neighbors to classmates from high school to members of his church are sharing stories and grieving as they remember Brian. I hope that they are able to take comfort in the fact that Brian Botello died honorably as an American patriot and he is now in a better place.

GOOD FRIDAY AGREEMENT

Mrs. CLINTON. Mr. President, today marks a historic moment for Northern